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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2013-0078, Sequence 4]

**Federal Acquisition Regulation; Federal
Acquisition Circular**

2005-68; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This Small Entity Compliance Guide has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2005-68, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2005-68, which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

DATES: [Insert date of publication in the FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005-68 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755.

Rule Listed in FAC 2005-68

<u>Subject</u>	<u>FAR Case</u>	<u>Analyst</u>
*Expansion of Applicability of the Senior Executive Compensation Benchmark (Interim)	2012-017	Chambers

SUPPLEMENTARY INFORMATION: Summary for the FAR rule follow. For the actual revisions and/or amendments made by this FAR case, refer to the specific item number and subject set forth in the document following this item summary. FAC 2005-68 amends the FAR as specified below:

Expansion of Applicability of the Senior Executive Compensation Benchmark (FAR Case 2012-017) (Interim)

This interim rule amends the FAR to implement the statutorily-expanded reach of the limitation on the allowability of compensation costs for certain contractor personnel. This limitation on the allowability of compensation costs is an amount set annually by the Office of Federal Procurement Policy. Prior to the enactment of section 803 of the National Defense Authorization Act for

Fiscal Year 2012 (Pub L 112-81), this limitation applied to a contractor's five most highly compensated employees in management positions at each home office and each segment of the contractor, with respect to all contracts subject to the FAR cost principles with all Federal agencies. In section 803, Congress expanded the application of the limitation so that it applies to all contractor employees, rather than just the top five executives in the case of contracts covered by Title 10 of the United States Code. Moreover, Congress in section 803(c)(2) stated that this expanded reach "shall apply with respect to costs of compensation incurred after January 1, 2012, under contracts entered into before, on, or after the date of the enactment of this Act" (the date of enactment was December 31, 2011). Section 803(c)(1) also provided that this change shall be implemented in the FAR.

This interim rule implements section 803 and provides that for DoD, NASA, and Coast Guard contracts, the compensation limitation applies to all contractor employees, rather than just the top five executives. For contracts with agencies other than DoD, NASA, and the Coast Guard, the reach of the limitation was not changed by section 803 and therefore will continue to be a contractor's five most highly compensated employees in management positions at each home office and each segment of the contractor.

An analysis of data in the Federal Procurement Data System (FPDS) revealed that most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule.

Section 803 is being implemented in the FAR through two rulemakings. In accordance with section 803, this interim rule applies to the compensation costs of all contractor employees incurred after January 1, 2012, on all DoD, NASA, and Coast Guard contracts awarded on or after December 31, 2011. Concurrently, DoD, GSA, and NASA are issuing a proposed rule (FAR Case 2012-025) to solicit comments on the application of the requirements of section 803 to DoD, NASA, and Coast Guard contracts entered into before December 31, 2011.

Dated: June 10, 2013

Laura Auletta,
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